

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No.05-cr-126-03-SM

Douglas Abernathy

O R D E R

On April 8, 2010, defendant appeared for a probable cause hearing under Fed. R. Crim. P. 32.1 on three alleged violations of conditions of supervision. Defendant did not contest violations one and two, but as to violation 3 he states that he asked the arresting officer to notify Officer Daniel of his detention and also emailed him. Daniel says he received no email. I therefore find probable cause to hold him for a revocation hearing on all three alleged violations.

Defendant sought bail conditions under Rule 32.1(a)(6). Under Rule 32.1(a)(6) defendant bears the burden of establishing by clear and convincing evidence that he will not flee and that he poses no danger to any other person or to the community. Defendant poses no risk of flight, but he has a severe drinking problem, has used alcohol and driven, and has been so drunk in a public place that he was put in protective custody. He has failed to complete two treatment programs. He is a danger to the

community. There are no conditions which are likely to assure the safety of the community.

Accordingly, it is ORDERED that the defendant be detained pending trial.

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: April 8, 2010

cc: Bjorn R. Lange, Esq.
Alfred J.T. Rubega, Esq.
U.S. Marshal
U.S. Probation